

ADMINISTRATIVE RULES  
FOR  
PROTECTIVE CUSTODY PROCEDURES OF INCAPACITATED INEBRIATES  
89-P11

Pursuant to Chapter 7, Title 33, Vermont Statutes Annotated

## SERVICES TO INCAPACITATED INEBRIATES

### 1. Responsibility

The Office of Alcohol and Drug Abuse Programs, a Division of the Department of Health in the **Agency of Human Services** is designated the responsibility to carry out the legislative mandate and to adopt rules and standards for the provision of services to persons incapacitated from the abuse of alcohol. To carry out this responsibility the Office sets forth the rules contained herein, under the authority of Chapter 7 of Title 33 VSA and pursuant to Chapter 25 of Title 3, VSA.

### 2. Purpose

Per current statutes (33 VSA 708) provide that when a law enforcement officer encounters a person who, in the judgement of the officer is incapacitated, from the use of alcohol, the person shall be taken into protective custody by the officer. The officer shall then transport the incapacitated person to an approved alcohol treatment program with detoxification capabilities or to the emergency room of a licensed general hospital for treatment, except that if an Alcohol Crisis Team or a designated alcohol counselor exists in the vicinity and is available, the person may be released to the team or counselor at a location mutually agreeable between the officer and treator. The period of protective custody shall end when the person is released to any of the above programs. In the event that a program willing to accept the incapacitated person is not available, or where assistance is actively refused or resisted by the incapacitated person, then protective custody can be continued by lodging the person in a lock-up or community correctional center. Protective custody cannot exceed 24 hours. The rules set forth herein provide for the following: the establishment of Alcohol Crisis Teams as the primary treatment response to requests for services for incapacitated persons; procedures to be followed when taking a person into protective custody; and the criteria for determining incapacitation before lodging of an incapacitated person in a lock-up or community correctional center.

### 3. Alcohol Crisis Teams

- a) The Office of Alcohol and Drug Abuse Programs shall designate qualified organizations to manage Alcohol-Crisis Teams. The number and location of Alcohol Crisis Teams shall be determined by the Office to insure accessibility and a timely response to requests for assistance from law enforcement agencies.
- b) A qualified organization, for the purposes of management of an Alcohol Crisis Team is any organization in compliance with the Vermont Standards for Substance Abuse Treatment and approved by the Office of Alcohol and Drug Abuse Programs.
- c) Alcohol Crisis Teams must be able to comply with the following requirements:
  - the designated agency must appoint a staff person at the supervisory level, to serve as the coordinator of the Alcohol Crisis Team and as liaison for the agency to coordinate the activities of the Alcohol Crisis Team with health and law enforcement agencies;
  - the services of the Alcohol Crisis Team shall be available and accessible 24 hours a day;
  - the Alcohol Crisis Team shall provide immediate response to all requests for assistance;
  - the designated agency shall train all Alcohol Crisis Team personnel to an acceptable level of competency to deal with the acutely intoxicated individual and the sick alcoholic;
  - the Alcohol Crisis Team must have written protocols and procedures for referral, coordination and follow-up with law enforcement units, hospital emergency rooms, local lock-ups and/or correctional centers in the programs catchment area.
- d) Alcohol Crisis Team members must be able to meet the following minimum qualifications:
  - shall be knowledgeable of all rules, policies, and procedures promulgated by the Office under Chapter 7 of Title 33, VSA;

- shall be able to work effectively with law enforcement personnel and shall be knowledgeable of the appropriate and legal options available for incapacitated persons;
- shall be knowledgeable of social and medical resources available to incapacitated persons and the procedures and methods to be followed for their use;
- shall be knowledgeable of the affects of alcoholism and alcohol abuse to include familiarity with the signs of acute intoxication, incapacitation and withdrawal and the resources available for treatment.

These qualifications shall be demonstrated through education, training and direct experience.

e) Alcohol Crisis Teams shall provide the following services:

- screening services to evaluate intoxicated persons for incapacitation;
  - referral services: upon completion of the screening evaluation, the Alcohol Crisis Team shall offer assistance to incapacitated individuals to get them into a residential treatment setting for detoxification. The Crisis Team may also arrange for a medical screening prior to referral to an alcohol treatment program. Alcohol Crisis Teams shall either provide or arrange for transportation to a treatment program;
  - when treatment programs are not accessible to an Alcohol Crisis Team, the team member shall either directly supervise the incapacitated person, or arrange to have someone else provide the supervision. The supervision shall take place in a community shelter specifically set up for this purpose or can be provided at some other community location such as someone's home, with whom arrangements are made for supervision. In no event, shall an incapacitated person who is not refusing assistance be lodged in a local lock-up or community correctional center;
  - Alcohol Crisis Team members, or other designated staff of the agency shall make a follow-up contact with all persons lodged in a lock-up or correctional center or who are admitted to a hospital. The individual shall be informed of the circumstances leading up to the intervention and the reasons for the disposition. Further assistance, treatment or education shall be offered the individual as part of the follow up. In correctional centers and local lock-ups the follow-up shall take place upon the request of the facility when it is determined that the person is no longer incapacitated and is ready for release.
- f) Alcohol Crisis Team services are available to all incapacitated and intoxicated Persons referred by hospital emergency rooms and law enforcement personnel. These services are not available to persons in acute medical or psychiatric emergencies or persons in violation of the criminal codes of the State of Vermont.

#### 4. Criteria for Determining Incapacitation

- a) Incapacitation is a condition of substantial impairment of mental and physical functioning as the result of presence of alcohol in a persons system such that the person appears to need professional supervision to assure his or her safety or the safety of others.

The condition of incapacitation must be demonstrated by the following characteristics:

- consumption of alcoholic beverages as demonstrated by smell, an alco-sensor test or by test with a similar instrument or by information provided by the individual or as witnessed by others; and
- substantial impairment of mental or physical functioning as demonstrated by a number of characteristics, including: confusion as to time and place, distortion of judgement, loss of capacity for verbal communication and an inability to stand or walk without assistance. Any combination of the characteristics can be used to document substantial impairment, so long as characteristics can be linked directly to the person's about of alcohol.
- the exposure of the person to a harmful condition and/or to a situation which may be harmful to others.

All of the characteristics presented in the above criteria must be present and demonstrated before a determination of incapacitation can be made.

- b) Certain persons, not in a state of acute alcohol intoxication, can be incapacitated as a result of withdrawal from the use of alcohol. Alcohol withdrawal is a state of mental confusion which requires medical care or professional supervision to assure the person's safety.

#### 5. Protective Custody Procedures

- a) When a law enforcement officer encounters a person who, in the judgement of the officer is intoxicated, the officer may assist the individual, if he or she consents, home, to an approved treatment program, an Alcohol Crisis Team, or to some other mutually agreeable location.
- b) When a law enforcement officer encounters a person who, in the judgement of the officer is incapacitated, the person shall be taken into protective custody by the officer. The officer may request assistance from either an Alcohol Crisis Team or can take the person to a licensed general hospital emergency room. The period of protective custody shall end when the person is released to the Team or emergency room. The person may be released to his/her own devices at any time the officer judges the person to be no longer incapacitated.
- c) A person believed to be incapacitated by a law enforcement officer, and who has not committed a criminal offense, may be lodged in protective custody in a lock-up or community correctional center for up to 24 hours or until judged by the person in charge of the facility to be no longer incapacitated, but only if:
- the person refuses assistance from an Alcohol Crisis Team; or
  - no Alcohol Crisis Team and no staff physician or other medical professional at the nearest licensed general hospital will accept the person for treatment;
  - the person has been evaluated by an Alcohol Crisis Team member or a professional medical staff person at a licensed general hospital emergency room and has been found to be indeed incapacitated as per Section 4 of these rules.

#### 6. Protective Custody Restrictions

- a) Law enforcement officers responding to incidents involving violations of state criminal law or motor vehicle law and/or local ordinances, which are viewed as criminal violations shall exercise all legal responsibilities under state criminal law which shall take precedence over the provisions of 33 VSA Chapter 708
- b) Persons under the age of 18 cannot be lodged in Protective Custody at a local lock-up or correctional center. If an alcohol treatment program, Alcohol Crisis Team, or other program is not available or if the person refuses to be treated or transported to treatment, then the person shall be released to his/her parent or guardian. If a parent or guardian is not available then remedy must be pursued under the state laws dealing with the care and custody of minors (Chapter 55 Title 33, VSA)

#### 7. Lock-Up Requirements

The forms Incapacitation Screening and Disposition Report completed by Alcohol Crisis Teams, or Protective Custody of An Incapacitated Person completed by professional medical staff at licensed general hospital emergency rooms shall serve as the intake and release record for all persons evaluated incapacitated and placed in a community corrections center or local lock-up.

#### 8. Treatment of Minors

Any person under the age of eighteen, who is determined to be incapacitated shall be offered all of the treatment and services afforded an adult under these rules with the following exceptions and requirements:

- a) The parents or legal guardian shall be notified.
- b) If needed treatment is not available or is refused by the incapacitated person under age 18 then he/she shall be released to the care of his/her parents or guardian.

- c) In the event that a parent or guardian is not available in the area or able to take custody of the incapacitated person under age 18 and treatment is not available or is being refused then provisions for involuntary care must be initiated under Chapter 55 Title 33, VSA.
- d) No incapacitated person under the age of 18 can be lodged in protective custody in an adult facility.
- e) Each Alcohol Crisis Team must have written protocols to govern procedures
- f) to be followed by Alcohol Crisis Teams, law enforcement agencies and the Division
- g) of Social Services of the Department of Social and Rehabilitation Services for
- h) all cases involving incapacitated minors.